

# SUBSTITUTE DECISION-MAKING

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## SUBSTITUTE DECISION- MAKING

- Advance planning for health care decision-making
- Advance planning for financial decision-making
- If incompetent, court-ordered guardianship

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## Why Plan Ahead?

- To select own decision-maker
- To identify preferences
- Avoid costs and time of guardianship
- **NO** FAMILY CONSENT LAW in Wisconsin – *Really!*

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## Wisconsin's Health Care Advance Directives

- Living Will  
(Declaration to Physicians)
- Power of Attorney for Health Care
- Do-Not-Resuscitate Orders

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## LIVING WILL

- Only applies in two medical situations:
  1. Terminal with death "imminent"
  2. "Persistent Vegetative State"
- Only applies to two "treatments"
  1. Life-sustaining Treatment
  2. Feeding Tubes

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## Living Will Doesn't Apply...

- Declarant pregnant
- Not in PVS or Terminal with death imminent....
  - Exs: post-stroke, Alzheimer's, head injury...
- Not life-sustaining treatment or tube feedings involved...
  - Exs: admission to facilities, home care, bone-setting, medications...

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## Completing a Living Will

- Declarant - makes three decisions by checking boxes
- Two "disinterested" witnesses
- Signs in front of witnesses
- Discussion with family, friends, docs
- Distribution and Storage

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## CHOICES IN LIVING WILL

- Life-sustaining when terminal - No choice
- Feeding tubes when terminal - Choice
- Life-sustaining when in PVS - Choice
- Feeding tubes when terminal - Choice

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## Power of Attorney for Health Care

- "Principal" appoints an agent.
- Effective not at certain medical diagnoses; rather, when "incapacitated"
- Not just for certain medical procedures; rather, *almost* any procedure/service

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## Power of Attorney for Health Care, cont'd

- "Principal" appoints an "agent"
- Effective not at certain medical diagnoses; rather, when "incapacitated"
- Therefore, more comprehensive than Living Will

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## Selecting POAHC Agent

- Trustworthiness; will follow principal's, not own preferences
- Geographically close
- Assertive, strong
- Good communicator
- Not health care provider, spouse or employee of

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## Before Completion

- Consider agent choices
- Consider alternate
- TALK with Agent & Alternate
- Three specific decisions –
  - Authority to admit to NH/CBRF
  - Authority to withhold/withdraw feeding tubes
  - Continued effect if/when pregnant

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## Completing a POAHC

### Before:

- Identify agent and alternate
- Discuss of preferences with agent / alternate
- Make three decisions on delegation

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## Completing a POAHC

### Sign, talk, talk, talk:

- Two "disinterested" witnesses
- Sign in front of witnesses
- More discussion with family, friends, docs
- Distribution and Storage

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## Do-Not-Resuscitate Orders

- "Qualified patient"
- Patient, guardian or agent asks physician to order
- Bracelet issued
- EMTs, First Responders, Emergency Personnel: "No CPR, please!"

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## Financial Durable Powers of Attorney

- Why needed?
- "Principal" appoints "agent" or "attorney-in-fact"
- "Durable"
- Effective "immediate" or "springing"
- Powers – narrow or broad

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## Powers to Delegate

- Banking
- Bill paying
- Real estate
- Investments
- Insurances
- Public benefit applications

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## More Powers....

- Pensions
- Borrowing / Collecting loans
- Gifting – *Caution!*
  - Limit to whom?
  - Limit amounts?
  - Limit Frequency?
  - Third party consent?

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## Selecting Agent

- Honesty, honesty, honesty
- Will follow principal's wishes
- Good financial management skills
- Still more honesty

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## Protections

- Choice of Agent
- Limits on Gifting
- Monitorings / Accountings
- Fiduciary duty - signed
- Authority of others to bring action

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## What if never did advance planning?

- Ignorance
- Invincibility
- Perceived costs
- Procrastination
- Never had competence

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## GUARDIANSHIP

"Incompetent" means adjudged by a court to be substantially incapable of managing his or her property or caring for self by reason of infirmities of aging, developmental disabilities, or other like incapacities.

880.01(4), Wis. Stats.

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## Types of Guardianship

- Guardian of the PERSON
- Guardian of the ESTATE
  
- PLENARY Guardianship
- LIMITED Guardianship

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## More Terms....

- Proposed Ward
- "Stand-by" Guardian
- "Successor" Guardian
- Register in Probate

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## Roles of Attorneys

- Petitioner's Attorney  
*represents Petitioner*
- Guardian ad Litem  
*represents proposed ward's  
"best interests"*
- Defense / Advocacy Counsel  
*represents proposed ward*

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## Court Procedure

- Pre-Petition
- Filing Petition
- Pre-Hearing
- Hearing
- Order / Letters of Guardianship
- Post-Appointment

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## Decision-Making Standard for Guardian

- "BEST INTERESTS of the Ward"
- Example:  
*Guardian of Estate*
- Example:  
*Guardian of Person*

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## Accountability

- G/E: Annual Account
- G/P: Annual Report
- Complaints / Calls / Letters to Register in Probate or County Adult Protective Services

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## Resources

- Health Care Advance Directives
  - Financial Power of Attorney
- Forms: <http://dhfs.wisconsin.gov/forms/AdvDirectives/index.htm>
- Guardianship  
[www.cwag.org](http://www.cwag.org) - Legal Rights and Benefits / Wisconsin Guardianship Support Center - 1-800-488-2596

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